BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of **Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991**	**CG Docket No. 02-278**

PAUL D.S. EDWARDS' REPLY TO COMMENTS PERTAINING TO HIS PETITION FOR EXPEDITED CLARIFICATION AND DECLARATORY RULING CONCERNING THE TELEPHONE CONSUMER PROTECTION ACT

FILED APRIL 13, 2009

I. INTRODUCTION:

Interestingly, the majority of Comments submitted against Petitioner's Request for Clarification were prepared and promulgated for submission by ACA—consequently, each of those submissions expressed the identical misguided argument:

> A consumer's decision to provide a number to a creditor constitutes consent to call that number without regard to the character of the service associated with that number. That the consumer might thereafter decide to port that residential number to a wireless carrier does not destroy or limit the expression of consent to be called on that line...consent logically attaches to the number and is not revoked when the consumer subsequently ports that number to a wireless device absent an affirmative act by the consumer to inform the creditor that the consent has been revoked.

Irregardless of the debt collection industry's misrepresentations, the law requires **"Express Permission,"** and anything "implied" is deficient as a matter of law. **(emphasis added).**[1]

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[1] *See* In re Rules and Regulations Implementing the TCPA, 18 FCC Rcd. 14,014 at ¶172.

Still, even *assuming arguendo*, the consumer had provided the original creditor with a wireless telephone number, Petitioner maintains that there must be time limitations when "prior expressed consent" **("PEC")** and/or a "Established Business Relationship **("EBR")** ceases to exist.

In 2005 the ACA International, in yet another attempt to enable the debt collection industry circumvent the TCPA, FDCPA, and any oversight, submitted a Petition to the Federal Trade Commission **("FTC")** for an Advisory Opinion requesting clarification of two provisions of the FDCPA:

(1) must a debt collector identify a corporate name in order to meaningfully disclose the caller's identity;

and,

(2) when leaving a message for a consumer is the collector required to provide the mini-Miranda disclosure.

The FTC declined the ACA's request.

In the instant matter, the "debt collection" industry (as a third-party) argues that the consumers ability to make the decision as to who, and who should not have "Expressed Consent" to call the consumer on their cellular telephone should be left-in-the-hands of the collection industry.

III. DISCUSSION:

In today's economy, many consumers [often] use cellular telephones as their only phone number— and "privacy" is a prime reason. As a supporting fact for utilizing a wireless telephone for "privacy," unlike landline telephones, cellular phones don't have directories or publications providing a person's cellular telephone number. Least-we-forget, consumer privacy was at the forefront for enactment of the TCPA.

Many of the [approximately] 255 cut-n-paste commentary state the identical (erroneous) logic, that— when someone ports their landline telephone number to a wireless telephone, it "implies" that they consent to future calls.

However, the law requires **"Express Permission,"** and anything "implied" is insufficient as a matter of law. **(emphasis added)**. Id.

In addition, a number of the cut-n-paste commentaries use the unfounded argument that consumers want to hear from their bank on their cell phone— that, if they want to stop the calls, they will tell the bank so there is no way to identify who is calling or the purpose of such call— thus, denying the consumer any means to stop the costly and unwanted calls to one's cellular telephone. The reasons for a consumer to port their landline telephone number to their cellular service, is done for many reasons - - Porting with the want to be called by collection companies is rarely, if ever, an intended reason for porting a telephone number.

The TCPA prohibits any person—

> "(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice - . . .(iii) to any telephone number assigned to a...cellular telephone service...". 47 U.S.C. § 227(b)(1)(A)(iii).

That prohibition is explicit and central to the TCPA. It is unarguable that, 47 U.S.C. § 227(b)(1)(A)(iii) is applicable, irregardless of whether the wireless phone number started as a cell number, or was ported from a landline number to a cellular telephone.

Allowing collection companies and debt buyers to call a cellular telephone number (prior to receiving an "Expressed Consent" from the party being called) is contrary to both the TCPA's intent and the unambiguous wording in the FCC's Ruling.

Moreover, not only is the TCPA violated when and if the caller violates another law, but, as stated in the Order, the onus is upon the third-party[ies] to establish that any EBR and/or PEC which had been established between the consumer and the original creditor, continues to exists—

> To ensure that creditors and debt collectors call only those consumers who have consented to receive autodialed and prerecorded message calls...the burden will be on the creditor [and/or "debt collector" / Collection Company[ies]] to show it obtained the necessary prior express consent. Similarly, a creditor on whose behalf an autodialed or prerecorded...message call is made to a wireless number bears the responsibility for any violation of the Commission's rules. *See* Ruling, III. DISCUSSION, A, 10, Pge. 7. **(emphasis added)**.

Several of the commentaries, including the ACA, erroneously assert that consumers have, and continue to incur lesser charges for cellular use by subscribing to plans allowing large numbers of minute usage - - these are referenced as "bucket of minutes." Because "bucket of minutes," or individual plans can significantly vary between cell phone providers, a substantial expense can occur when those "bucket" or monthly minutes are exceeded. Furthermore, having a collection company calling one's cellular telephone several times a week (a typical collection technique) and willfully avoiding to disclose its identity— thus depriving the consumer the ability to take action to avoid additional charges to their cellular phone bill— can cause a substantial monetary increase to the cellular telephone subscriber.

What is more, it may be the debt collector[s] utilizing ATDS calls, and having not identifying themselves, that cause the cellular telephone subscriber to exceed the monthly minute allotment, and causing the subscriber to incur additional and substantial charges.

As stated by Robert Biggerstaff in his Comment submission:

> Wireless numbers are carried with a consumer, often 24 hours a day. Wireless numbers have various costs associated with them, either per minute, per call, or as part of what the Commission calls a "bucket" of minutes. Calls to a land-line number

don't distract drivers, interrupt family outings, or invade classrooms. Wireless numbers are not listed in the phone book and are not available in traditional directory assistance. In the law, wireless phones are explicitly treated differently from land-line numbers.

They are, simply, more private and deserving of more privacy protection than land-line numbers.

III. CONCLUSION:

This is about the consumer, the person that pays his/her cellular telephone charges, to retain and control who they allow and who they reject from calling their cellular phone and consuming their monthly minutes. When the consumer voluntarily provides his/her cellular number to a business for its services or goods, then "Express Consent" is acknowledged for that specific business **only**, to contact the consumer on his/her cellular telephone.

However, when the consumer, or business, terminates that relationship, any "consent" that was initially provided for contacting the consumer on his/her cellular telephone ceases to exist.

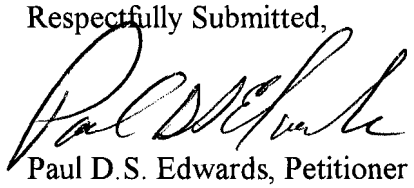
If, the consumer has created a debt with the original business, then, the business relationship would terminate either - - (i) when the consumer debt is paid-in-full, or (ii) when the consumer ceases to continue to pay on the debt (or within a time-period subsequent to the consumer ceasing his/her payment on the debt.). Should the [alleged] debt be assigned or sold to a collection company (a third-party), that company **must** be required to obtain a new "Express Consent"from the consumer prior to the collection company contacting the consumer on his/her cellular telephone— unless a clear and conspicuous "written agreement" was entered into between the consumer and original creditor.

The Commission must determine when an existing PEC and/or EBR is extinguished once a consumer ceases transacting any business with a creditor or business. Collection companies **must**

automatically transferred to them, considering it may take several years for the original creditor to assign a debt, or sell a debt to a collection company.

For the Commission to allow the continuance of collection companies unrelenting ATDS calls to cellular telephones; For the Commission to allow the continuance of collection companies unrelenting invasion of one's privacy; For the Commission to allow the continuance of collection companies unrelenting causation of monetary expenses upon the cellular telephone subscribers - - would be completely unreasonable.

Respectfully Submitted,



Paul D.S. Edwards, Petitioner